

NO. 91-239

FILED

SEP 9 1991

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

CHARLES F. PATTERSON.

Petitioner

versus

- AMY S. BOLAND.

Respondent

PETITION FOR WRIT OF CERTIORARI FROM
COURT OF APPEALS OF OHIO, GREENE COUNTY

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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ARGUMENT IN OPPOSITION TO PETITIONER'S
QUESTIONS FOR REVIEW

ARGUMENTS IN OPPOSITION TO QUESTIONS
NOS. 1 AND 2

Petitioner requests that certiorari be granted under 28 U.S.C. §2403, arguing that his constitutional right to a trial by jury has been denied as a result of the lower trial court granting Respondent's Motion for Summary Judgment.

The procedural summary judgment rule on which the state court based its decision is similar to the Federal Civil Rule 56. The remedy of summary judgment dates back to 1855 England as a means to "prompt disposition of bona fide issues of law as well as sham defenses." The Summary Judgment, 38 Yale L.J. (1929). Its use has allowed the expedient resolution of hundreds of thousands of cases. *Id.*

The principle underlying the summary judgment is that the jury is the trier of fact only; the judge addresses issues of

law. In a case in which it can be determined as a matter of law that no issue of fact exists, it would be in error to turn the case over to the jury for decision and it is proper for the court to grant judgment. This is the same principle underlying other well-established procedural rules, such as the directed verdict and judgments notwithstanding the verdict.

ARGUMENTS IN OPPOSITION TO
QUESTION NO. 3

Petitioner poses the question as to whether a party to a divorce is entitled to a trial by jury. As the case sub judice is a malpractice action and not the divorce action, this question is not properly before the court.

ARGUMENTS IN OPPOSITION TO
QUESTIONS NOS. 4 AND 5

Petitioner again questions the constitutionality of the summary judgment, on the basis that it is unfair to require a

Plaintiff in a malpractice action to provide the affidavit of a legal expert to avoid the granting of summary judgment for the Defendant.

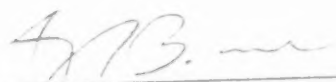
Under the case of Minick v. Callahan, 24 Ohio Ops. 3d 104 (Lucas Cty. App. 1983) an Ohio court held that expert testimony is necessary in order for a Plaintiff to establish that an attorney has failed to exercise "the knowledge, skill and ability ordinarily possessed and exercised by members of the legal profession similarly situated." Id. This is an appropriate legal standard established by the Ohio courts and does nothing to effect a Plaintiff's right to jury trial where there are genuine issues of fact for a jury to decide.

CONCLUSION

In conclusion, it is submitted that the questions of law presented by Petitioner do not merit review by this Court.

The trial court below granted summary judgment for Respondent. The Ohio Court of Appeals affirmed that decision. The Ohio Supreme Court denied Petitioner's request for a writ of certiorari, finding there to be no substantial constitutional question presented.

Respondent requests that Petitioner's request for leave to appeal be denied.



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